

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 840

Introduced by Redfield, 12; Cornett, 45; Erdman, 47; Howard, 9;
Preister, 5; Synowiecki, 7

Read first time January 4, 2006

Committee: Revenue

A BILL

1 FOR AN ACT relating to natural gas; to amend sections 77-2701.39
2 and 77-2704.13, Reissue Revised Statutes of Nebraska,
3 and sections 77-2701, 77-2701.04, and 77-2701.16, Revised
4 Statutes Supplement, 2005; to exempt natural gas from
5 sales and use taxes; to impose an excise tax on natural
6 gas; to provide an operative date; and to repeal the
7 original sections.

8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701, Revised Statutes Supplement,
2 2005, is amended to read:

3 77-2701 Sections 77-2701 to 77-27,135.01, 77-27,222, and
4 77-27,228 to 77-27,234 and sections 6 and 7 of this act shall be
5 known and may be cited as the Nebraska Revenue Act of 1967.

6 Sec. 2. Section 77-2701.04, Revised Statutes Supplement,
7 2005, is amended to read:

8 77-2701.04 For purposes of sections 77-2701.04 to 77-2713
9 and section 6 of this act, unless the context otherwise requires,
10 the definitions found in sections 77-2701.05 to 77-2701.47 shall be
11 used.

12 Sec. 3. Section 77-2701.16, Revised Statutes Supplement,
13 2005, is amended to read:

14 77-2701.16 (1) Gross receipts shall mean the total amount
15 of the sale or lease or rental price, as the case may be, of
16 the retail sales of retailers valued in money whether received in
17 money or otherwise, without any deduction on account of any of the
18 following:

19 (a) The cost of property sold. In accordance with rules
20 and regulations adopted and promulgated by the Tax Commissioner, a
21 deduction may be taken if the retailer has purchased property for
22 some purpose other than resale, has reimbursed his or her vendor
23 for tax which the vendor is required to pay to the state or has
24 paid the use tax with respect to the property, and has resold
25 the property prior to making any use of the property other than

1 retention, demonstration, or display while holding it for sale in
2 the regular course of business. If such a deduction is taken by the
3 retailer, no refund or credit will be allowed to his or her vendor
4 with respect to the sale of the property;

5 (b) The cost of the materials used, labor or service
6 costs, interest paid, losses, or any other expense;

7 (c) The cost of transportation of the property;

8 (d) The amount of any excise or property tax levied
9 against the property except as otherwise provided in the Nebraska
10 Revenue Act of 1967; or

11 (e) The amount charged for warranties, guarantees, or
12 maintenance agreements.

13 (2) Gross receipts of every person engaged as a public
14 utility specified in this subsection or as a community antenna
15 television service operator or any person involved in connecting
16 and installing services defined in subdivision (2)(a), (b), or (d)
17 of this section shall mean:

18 (a) In the furnishing of telephone communication service,
19 other than mobile telecommunications service as described in
20 section 77-2706.02, the gross income received from furnishing local
21 exchange telephone service and intrastate message toll telephone
22 service. In the furnishing of mobile telecommunications service
23 as described in section 77-2706.02, the gross income received
24 from furnishing mobile telecommunications service that originates
25 and terminates in the same state to a customer with a place

1 of primary use in Nebraska. Gross receipts shall not mean (i)
2 the gross income, including division of revenue, settlements, or
3 carrier access charges received on or after January 1, 1984, from
4 the sale of a telephone communication service to a communication
5 service provider for purposes of furnishing telephone communication
6 service or (ii) the gross income attributable to services rendered
7 using a prepaid telephone calling arrangement. For purposes of
8 this subdivision, a prepaid telephone calling arrangement shall
9 mean the right to exclusively purchase telecommunications service
10 that is paid for in advance that enables the origination of calls
11 using an access number or authorization code, whether manually or
12 electronically dialed;

13 (b) In the furnishing of telegraph service, the gross
14 income received from the furnishing of intrastate telegraph
15 services;

16 (c) In the furnishing of gas, electricity, sewer, and
17 water service except water used for irrigation of agricultural
18 lands and manufacturing purposes, the gross income received from
19 the furnishing of such services upon billings or statements
20 rendered to consumers for such utility services; and

21 (d) In the furnishing of community antenna television
22 service, the gross income received from the furnishing of such
23 community antenna television service as regulated under sections
24 18-2201 to 18-2205 or 23-383 to 23-388.

25 Gross receipts shall also mean gross income received from

1 the provision, installation, construction, servicing, or removal of
2 property used in conjunction with the furnishing, installing, or
3 connecting of any public utility services specified in subdivision
4 (2)(a) or (b) of this section or community antenna television
5 service specified in subdivision (2)(d) of this section. Gross
6 receipts shall not mean gross income received from telephone
7 directory advertising.

8 (3) Gross receipts of every person engaged in selling,
9 leasing, or otherwise providing intellectual or entertainment
10 property shall mean:

11 (a) In the furnishing of computer software, the gross
12 income received, including the charges for coding, punching, or
13 otherwise producing computer software and the charges for the
14 tapes, disks, punched cards, or other properties furnished by the
15 seller; and

16 (b) In the furnishing of videotapes, movie film,
17 satellite programming, satellite programming service, and satellite
18 television signal descrambling or decoding devices, the gross
19 income received from the license, franchise, or other method
20 establishing the charge except the gross income received from
21 videotape and film rentals, satellite programming, and satellite
22 programming service when the sales tax or the admission tax is
23 charged under the Nebraska Revenue Act of 1967 and except as
24 provided in section 77-2704.39.

25 (4) Gross receipts for providing a service shall mean:

1 (a) The gross income received for building cleaning and
2 maintenance, pest control, and security;

3 (b) The gross income received for motor vehicle washing,
4 waxing, towing, and painting;

5 (c) The gross income received for computer software
6 training;

7 (d) The gross income received for installing and applying
8 tangible personal property if the sale of the property is subject
9 to tax;

10 (e) The gross income received for labor by a contractor
11 except as provided in section 77-2704.55;

12 (f) The gross income received for services of
13 recreational vehicle parks;

14 (g) The gross income received for labor for repair or
15 maintenance services performed with regard to tangible personal
16 property the sale of which would be subject to sales and use
17 taxes, excluding motor vehicles, except as otherwise provided in
18 subdivision (2)(f) of section 77-2702.13 or section 77-2704.26;

19 (h) The gross income received for animal specialty
20 services except (i) veterinary services and (ii) specialty services
21 performed on livestock as defined in section 54-183; and

22 (i) The gross income received for detective services.

23 (5) Gross receipts shall not include any of the
24 following:

25 (a) Cash discounts allowed and taken on sales;

1 (b) The amount of any rebate granted by a motor vehicle
2 or motorboat manufacturer or dealer at the time of sale of the
3 motor vehicle or motorboat, which rebate functions as a discount
4 from the sales price of the motor vehicle or motorboat;

5 (c) Sales price of property or services returned or
6 rejected by customers when the full sales price is refunded either
7 in cash or credit;

8 (d) The amount charged for finance charges, carrying
9 charges, service charges, or interest from credit extended on sales
10 of property or services under contracts providing for deferred
11 payments of the purchase price if such charges are not used as a
12 means of avoiding imposition of the tax upon the actual sales price
13 of the property or services;

14 (e) The value of property taken by a seller in trade as
15 all or a part of the consideration for a sale of property of any
16 kind or nature;

17 (f) The value of a motor vehicle or motorboat taken by
18 any person in trade as all or a part of the consideration for a
19 sale of another motor vehicle or motorboat;

20 (g) Receipts from conditional sale contracts, installment
21 sale contracts, rentals, and leases executed in writing prior to
22 June 1, 1967, and with delivery of the property prior to June
23 1, 1967, if such conditional sale contracts, installment sale
24 contracts, rentals, or leases are for a fixed price and are not
25 subject to negotiation or alteration; or

1 (h) Except as provided in subsection (2) of this section,
2 until October 1, 2002, the amount charged for labor or services
3 rendered in installing or applying the property sold if such amount
4 is separately stated and such separate statement is not used as a
5 means of avoiding imposition of the tax upon the actual sales price
6 of the property.

7 (6) Subsections (1) through (6) of this section terminate
8 on January 1, 2004.

9 (7) Gross receipts means the total amount of the sale or
10 lease or rental price, as the case may be, of the retail sales of
11 retailers.

12 (8) Gross receipts of every person engaged as a public
13 utility specified in this subsection or as a community antenna
14 television service operator or any person involved in connecting
15 and installing services defined in subdivision (8)(a), (b), or (d)
16 of this section means:

17 (a)(i) In the furnishing of telephone communication
18 service, other than mobile telecommunications service as described
19 in section 77-2703.04, the gross income received from furnishing
20 local exchange telephone service and intrastate message toll
21 telephone service; and

22 (ii) In the furnishing of mobile telecommunications
23 service as described in section 77-2703.04, the gross income
24 received from furnishing mobile telecommunications service that
25 originates and terminates in the same state to a customer with a

1 place of primary use in Nebraska;

2 (b) In the furnishing of telegraph service, the gross
3 income received from the furnishing of intrastate telegraph
4 services;

5 (c) In the furnishing of ~~gas~~, electricity, sewer, and
6 water service, the gross income received from the furnishing of
7 such services upon billings or statements rendered to consumers for
8 such utility services;

9 (d) In the furnishing of community antenna television
10 service, the gross income received from the furnishing of such
11 community antenna television service as regulated under sections
12 18-2201 to 18-2205 or 23-383 to 23-388; and

13 (e) The gross income received from the provision,
14 installation, construction, servicing, or removal of property used
15 in conjunction with the furnishing, installing, or connecting of
16 any public utility services specified in subdivision (8)(a) or (b)
17 of this section or community antenna television service specified
18 in subdivision (8)(d) of this section, which shall be considered
19 construction services beginning October 1, 2003. Except when acting
20 as a subcontractor for a public utility, this subdivision does not
21 apply to the gross income received by a contractor electing to be
22 treated as a consumer of building materials under subdivision (2)
23 or (3) of section 77-2701.10 for any such services performed on the
24 customer's side of the utility demarcation point prior to October
25 1, 2003.

1 (9) Gross receipts of every person engaged in selling,
2 leasing, or otherwise providing intellectual or entertainment
3 property means:

4 (a) In the furnishing of computer software, the gross
5 income received, including the charges for coding, punching, or
6 otherwise producing any computer software and the charges for the
7 tapes, disks, punched cards, or other properties furnished by the
8 seller; and

9 (b) In the furnishing of videotapes, movie film,
10 satellite programming, satellite programming service, and satellite
11 television signal descrambling or decoding devices, the gross
12 income received from the license, franchise, or other method
13 establishing the charge.

14 (10) Gross receipts for providing a service means:

15 (a) The gross income received for building cleaning and
16 maintenance, pest control, and security;

17 (b) The gross income received for motor vehicle washing,
18 waxing, towing, and painting;

19 (c) The gross income received for computer software
20 training;

21 (d) The gross income received for installing and applying
22 tangible personal property if the sale of the property is subject
23 to tax;

24 (e) The gross receipts received for labor by a contractor
25 electing to be treated as a consumer of building materials under

1 subdivision (2) or (3) of section 77-2701.10 except as provided
2 in section 77-2704.55. For purposes of this subdivision, the gross
3 receipts received for labor shall be sixty percent of the sales
4 price for building materials and construction services less an
5 allowance for sales tax paid on building materials. The allowance
6 for sales tax paid on building materials shall equal the sales tax
7 rate in effect at the time payment is received at the location of
8 the project times forty percent of the sales price for building
9 materials and construction services;

10 (f) The gross income received for services of
11 recreational vehicle parks;

12 (g) The gross income received for labor for repair or
13 maintenance services performed with regard to tangible personal
14 property the sale of which would be subject to sales and use taxes,
15 excluding motor vehicles, except as otherwise provided in section
16 77-2704.26 or 77-2704.50;

17 (h) The gross income received for animal specialty
18 services except (i) veterinary services and (ii) specialty services
19 performed on livestock as defined in section 54-183; and

20 (i) The gross income received for detective services.

21 (11) Gross receipts includes the sale of admissions which
22 means the right or privilege to have access to or to use a place
23 or location. An admission includes a membership that allows access
24 to or use of a place or location, but which membership does not
25 include the right to hold office, vote, or change the policies of

1 the organization. When an admission to an activity or a membership
2 constituting an admission pursuant to this subsection is combined
3 with the solicitation of a contribution, the portion or the amount
4 charged representing the fair market price of the admission shall
5 be considered a retail sale subject to the tax imposed by section
6 77-2703. The organization conducting the activity shall determine
7 the amount properly attributable to the purchase of the privilege,
8 benefit, or other consideration in advance, and such amount shall
9 be clearly indicated on any ticket, receipt, or other evidence
10 issued in connection with the payment.

11 (12) Gross receipts includes the sale of live plants
12 incorporated into real estate except when such incorporation is
13 incidental to the transfer of an improvement upon real estate or
14 the real estate.

15 (13) Gross receipts includes the sale of any building
16 materials annexed to real estate and any construction services by a
17 person electing to be taxed as a retailer pursuant to subdivision
18 (1) of section 77-2701.10.

19 (14) Gross receipts includes the sale of prepaid
20 telephone calling arrangements and the recharge of prepaid
21 telephone calling arrangements. If the sale or recharge of a
22 prepaid telephone calling arrangement does not take place at
23 the vendor's place of business, the sale or recharge shall be
24 conclusively determined to take place at the customer's shipping
25 address or, if there is no item shipped, at the customer's

1 billing address. For purposes of this subsection, a prepaid
2 telephone calling arrangement means the right to exclusively
3 purchase telecommunications services that are paid for in advance
4 that enables the origination of calls using an access number or
5 authorization code, whether manually or electronically dialed.

6 (15) Gross receipts does not include:

7 (a) The amount of any rebate granted by a motor vehicle
8 or motorboat manufacturer or dealer at the time of sale of the
9 motor vehicle or motorboat, which rebate functions as a discount
10 from the sales price of the motor vehicle or motorboat; or

11 (b) The price of property or services returned or
12 rejected by customers when the full sales price is refunded
13 either in cash or credit.

14 (16) Subsections (7) through (15) of this section become
15 operative on January 1, 2004.

16 (17) The Tax Commissioner shall hold a hearing on rules
17 and regulations to carry out the changes made to this section by
18 Laws 2003, LB 759. It is the intent of the Legislature that the Tax
19 Commissioner adopt and promulgate rules and regulations to carry
20 out such changes.

21 Sec. 4. Section 77-2701.39, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 77-2701.39 Tangible personal property means personal
24 property which may be seen, weighed, measured, felt, or touched or
25 which is in any other manner perceptible to the senses. Tangible

1 personal property includes electricity, water, ~~gas~~, steam, and
2 prewritten computer software.

3 Sec. 5. Section 77-2704.13, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 77-2704.13 Sales and use taxes shall not be imposed on
6 the gross receipts from the sale, lease, or rental of and the
7 storage, use, or other consumption in this state of:

8 (1) Sales and purchases of electricity, coal, ~~gas~~, fuel
9 oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear
10 fuel, and butane when more than fifty percent of the amount
11 purchased is for use directly in irrigation or farming;

12 (2) Sales and purchases of such energy sources or fuels
13 made before April 1, 1993, or after March 31, 1994, when more
14 than fifty percent of the amount purchased is for use directly
15 in processing, manufacturing, or refining, in the generation of
16 electricity, or by any hospital. The state tax paid on purchases
17 of such energy sources or fuels during the period beginning
18 April 1, 1993, and ending March 31, 1994, shall not exceed one
19 hundred thousand dollars for any one location when more than fifty
20 percent of the amount purchased is for use directly in processing,
21 manufacturing, or refining or by any hospital. All purchases
22 of such energy sources or fuels for use in the generation of
23 electricity during the period beginning April 1, 1993, and ending
24 March 31, 1994, shall be taxable. Any taxpayer who has paid the
25 limit of state tax on such energy sources or fuels at one location

1 shall be exempt on all other qualifying purchases at such location.
2 Such taxpayer shall be entitled to a refund of any amount of
3 state or local option tax paid on an energy source or fuel exempt
4 under this subdivision. A refund shall be made pursuant to section
5 77-2708; and

6 (3) Sales and purchases of water used for irrigation of
7 agricultural lands and manufacturing purposes.

8 Sec. 6. Sales and use taxes shall not be imposed on the
9 gross receipts from the sale, lease, or rental of and the storage,
10 use, or other consumption in this state of natural gas.

11 Sec. 7. (1) There is imposed an excise tax on all sales,
12 use, or other consumption in this state of natural gas. The tax
13 shall be paid by the purchaser and collected by the seller. The tax
14 rate shall be 47.13 cents per one million British thermal units,
15 plus an additional 4.28 cents per one million British thermal units
16 per one-half cent of local option sales tax imposed by a political
17 subdivision on sales, use, or other consumption in the political
18 subdivision.

19 (2) The tax imposed by this section shall be remitted to
20 the Department of Revenue for credit to the General Fund or for
21 distribution to political subdivisions that impose a local option
22 sales tax. Payment of the tax shall be accompanied by a report
23 setting forth the British thermal units of natural gas sold by
24 the seller for the reporting period. The report shall be on a
25 form prescribed by the department and shall include such other

1 information as the Tax Commissioner deems necessary. The provisions
2 of the Nebraska Revenue Act of 1967 applicable to sales and use
3 taxes shall apply to imposition of the tax.

4 (3) The Tax Commissioner shall adopt and promulgate rules
5 and regulations to carry out this section.

6 Sec. 8. This act becomes operative on January 1, 2007.

7 Sec. 9. Original sections 77-2701.39 and 77-2704.13,
8 Reissue Revised Statutes of Nebraska, and sections 77-2701,
9 77-2701.04, and 77-2701.16, Revised Statutes Supplement, 2005, are
10 repealed.